

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,
Plaintiff,
v.
B. KIBLER, et al.,
Defendants.

Case No. 1:20-cv-01740-NONE-SKO (PC)

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED FOR
FAILURE TO EXHAUST**

21-DAY DEADLINE

Plaintiff Guillermo Trujillo Cruz is a state prisoner proceeding *pro se* in this action brought pursuant to 42 U.S.C. § 1983. He alleges that, on November 14, 2020, Defendants purposefully failed to protect him from an attack by another inmate. (Doc. 1 at 3, 5, 6.)

Plaintiff's complaint is dated November 20, 2020, only six days after the subject incident. (*Id.* at 7.) The short duration of time between the incident and the initiation of this action "strongly suggests that [he] did not ... attempt to comply with the exhaustion requirement." *Howell v. Selliers*, No. 1:18-cv-00420-EPG, 2018 WL 4173724, at *2 (E.D. Cal. 2018). It would be nearly impossible to complete multiple levels of administrative review in only six days.

Additionally, Plaintiff attaches to his complaint responses to grievances filed *prior to* November 14, 2020. The inclusion of these responses, coupled with the *absence* of any response regarding the November 14 incident, also suggests that Plaintiff failed to file a grievance regarding the incident, or to receive a response to a grievance, before he filed his complaint.

1 The Prison Litigation Reform Act (PLRA) provides that “[n]o action shall be brought with
2 respect to prison conditions under ... any other Federal law ... by a prisoner confined in any jail,
3 prison, or other correctional facility until such administrative remedies as are available are
4 exhausted.” 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and
5 “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (citation
6 omitted). The exhaustion requirement applies to all inmate suits relating to prison life, *Porter v.*
7 *Nussle*, 534 U.S. 516, 532 (2002), regardless of the relief sought by the prisoner or offered by the
8 administrative process, *Booth v. Churner*, 532 U.S. 731, 741 (2001). Inmates are required to
9 “complete the administrative review process in accordance with the applicable procedural rules,
10 including deadlines, as a precondition to bringing suit in federal court.” *Woodford v. Ngo*, 548
11 U.S. 81, 88, 93 (2006). Generally, failure to exhaust is an affirmative defense that the defendant
12 must plead and prove. *Jones*, 549 U.S. at 204, 216. However, courts may dismiss a claim if
13 failure to exhaust is clear on the face of the complaint. *See Albino v. Baca*, 747 F.3d 1162, 1166
14 (9th Cir. 2014).

15 It appears that Plaintiff failed to exhaust administrative remedies prior to initiating this
16 action. Accordingly, the Court ORDERS Plaintiff, **within 21 days** of the date of service of this
17 order, to show cause in writing why this action should not be dismissed for his failure to exhaust.
18 Alternatively, Plaintiff may file a notice of voluntary dismissal. Failure to comply with this order
19 will result in a recommendation that this action be dismissed.

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21 IT IS SO ORDERED.

22 Dated: **January 25, 2021**

/s/ Sheila K. Oberto
23 UNITED STATES MAGISTRATE JUDGE
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